

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.Rev.Pet.No. 4126 of 2006(A)

AGAINST THE ORDER DATED 14/11/2006 IN CMP.NO.4577/2006 IN
CC.219/2006 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
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REVN. PETITIONER: PETITIONERS/ACCUSED

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1. KURIACHAN CHACKO,
S/O.P.V.CHACKO, PALAKKAL HOUSE,
G-258, PANAMPILLY NAGAR, ERNAKULAM,
COCHIN-682 036.
 2. ACHAMMA CHACKO,
W/O.P.V.CHACKO, PALAKKAL HOUSE, G-258,
PANAMPILLY NAGAR, ERNAKULAM,
COCHIN-682 036, (THE 2ND PETITIONER'S NAME IS
WRONGLY TYPED AS ANNAMMA CHACKO IN THE ORDER
PASSED BY THE COURT BELOW).
 3. LINU JOY, W/O.JOY JOHN,
POWATHIL HOUSE, ASSUMPTION CHURCH ROAD,
CHANGANACHERRY, PIN-686101,
KOTTAYAM DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD
SRI.M.K.DAMODARAN (SR.)
SRI.O.V.MANIPRASAD

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
(DEPUTY SUPERINTENDENT OF POLICE, NARCOTIC CELL,
CRIME NO.672/2006 OF CENTRAL POLICE STATION,
ERNAKULAM), REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682 031.

BY SPL. P.P. SRI. VENGANOOR K. CHANDRASEKHARAN NAIR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13/06/2007 ALONG WITH CRRP NO. 4132 OF 2006 AND OTHER
CONNECTED CASES, THE COURT ON 19/7/2007 PASSED THE
FOLLOWING:

R. BASANT, J.

**CRL.R.P.NOs.4126, 4132 4133/2006
& 1290, 1291 & 1292/07**

Dated this the 19th day of July, 2007

ORDER

Man's quest to make quick and easy money – to live not by the sweat of his brow, has been the cause of his fall from the halo of virtue on this planet. The yearning to make quick and easy money by means fair or foul has been central to the concepts of unfairness and criminality in all societies at all times. Exploiting his own superior faculties – physical, mental, intellectual or spiritual, man has always attempted to arrogate to himself what belongs legitimately to his brother beings. Individuals, families, communities, nations, races and generations have attempted to do this. Visionaries and sublime societies have always attempted to avoid and eliminate such exploitation of man by man. But, unfortunately the story of human civilisation is the tragic tale of such unsuccessful attempts. The result is the inequitable

and unjust world order that we are left to face. I have said so much as I am called upon to interpret the Statute – 'The Prize, Chits & Money Circulation Scheme (Banning) Act, 1978' (hereinafter referred to as 'the Act') which in its core is an attempt by the Indian Parliament to curb and control this basic instinct of the beastly man to make quick and easy money by exploiting the same yearning of his own gullible, stupid and foolish brotheren.

2. The State and the accused are before me with these six revision petitions – all challenging the same common order and the task before me is to decide whether the revisional powers of superintendence and correction deserve to be invoked to interfere with the impugned order under which the learned Chief Judicial Magistrate, Ernakulam

(i) directed the framing of charges against all the accused persons under Sec.2(c) read with Secs.3, 4 and 5 of the Act and Sec.420 of the IPC;

(ii) refused to frame charges against the accused under Sec.2(e) read with Secs.3, 4 and 5 of the Act.

3. Though the State has challenged the refusal to frame

charges under the provisions of the Reserve Bank of India Act also, after discussions at the Bar, in the course of the arguments before me, the learned Special Public Prosecutor/Additional Advocate General has not chosen to seriously challenge the said aspect. I am hence not proceeding to consider that aspect in detail.

4. The basic facts are simple. The petitioners are persons – partners of a firm and employees, who conduct a Scheme by name “LIS Deepasthambham Scheme”. The scheme is apparently simple in its conception. A person has to pay Rs.625/- and purchase one unit from the promoter. The promoter will make use of Rs.350/- to purchase 35 lottery tickets of the Kerala State Government lotteries each for Rs.10/- for the unit holder for the next 35 weeks. If the unit holder wins any prize upto Rs.5,000/- in the 35 draws in respect of the tickets, the promoter shall collect the same and pay the same to the unit holder. If he wins any prize above Rs.5,000/-, the ticket shall be handed over to the unit holder for collection. The balance of Rs.275/- will be used to make the unit holder a subscriber of a magazine by name “Thrikalam” for one year. The said magazine

will reproduce relevant and important materials from other magazines. It will also furnish information about the lottery tickets which have won prizes.

5. The unit holder will be returned not only Rs.625/- which he has initially invested, but twice his investment i.e., Rs.1,250/- (less Rs.100/- as service charges for the promoter and legal deduction for tax etc.,) on an early date.

6. Very attractive! The gullible would flock on hearing the proposal. What easy and quick money! How do you do this? A few at least may ask. If their queries are not satisfied, there will be no takers. The law does not oblige the promoter of a business venture to explain. But the promoter indulgently offers an explanation. To be credible, explain he must. Hence there is an explanation and this is the explanation that is offered.

7. When 35 tickets of Rs.10/- each are purchased, the Government pays a commission of 28% of which the promoter is indulgently prepared to share 25% with the unit holders. The publisher of the magazine gives a commission of 30% to the promoter. The promoter indulgently shares 25% with the unit holder. These amounts are available with the promoter. In the

order of strict seniority, the senior most unit holder will be paid Rs.1,250/- as soon as the requisite amounts are available as commission with the promoter. The promoter in addition to the 28% commission for the lottery ticket and 30% commission for the magazine, may also get commission for the prizes won by tickets sold through the promoter. These amounts will also be entirely made available to be paid to the unit holders. If a unit holder is paid Rs.1,250/- before the expiry of the period of 35 weeks, no lottery tickets will be purchased on his behalf thereafter. Similarly, if Rs.1,250/- is paid to the subscriber before the expiry of the period of one year, Thrikalam magazine will not be sent to the subscriber thereafter. The prize of such unpurchased lottery tickets and unissued magazines will also be available to the promoter to pay this amount of Rs.1,250/-. Therefore the scheme is viable and workable. All persons will double their investment at the earliest. No specific time limit is given. But it is assured that the amount will be doubled at the earliest. There are veiled suggestions that the return will be made before the expiry of 35 weeks and as soon as 14 more members are enrolled. Payment shall be made strictly in

accordance with seniority. The advantage of technology is also borrowed. Passwords can be chosen. There is a web site for the promoter. The unit holder can have access using his password and the site would reveal all details about the tickets purchased on behalf of the unit holder by the promoter. The unit holders shall thus know the details of the tickets purchased for them by the promoter and shall also be able to ascertain whether any prizes have been won by any ticket purchased on their behalf by the promoter.

8. The idea appears to have caught the imagination of many and the membership collection during a short period of time had exceeded Rs.450 Crores admittedly. The amounts were being paid to the unit holders promptly – on many occasions even before the expiry of 35 weeks. More and more subscribers joined the queue. There was aggressive publicity and marketing. The scheme was proceeding very happily. More and more amounts were coming into the kitty of the promoter from the unit holders.

9. The applecart was upset when the Inspector General of Police registered a crime alleging the commission of the offences

punishable under the Act and Sec.420 of the IPC. Investigation commenced. An attempt was made to preempt the investigation by a request to quash the crime registered by invoking the powers under Sec.482 of the Cr.P.C. A Division Bench of this Court headed by the Hon'ble Chief Justice V.K. Bali rejected the said prayer by the common judgment in W.P.(c) Nos.12775 and 13152/2006 & Crl.M.C.No.1377/06 dated 5/7/2006. Thereafter, after completing the investigation, final report was filed by the Investigating Officer.

10. Before the learned Chief Judicial Magistrate, who entertained the final report and took cognizance, a contention was raised at the stage of Sec.239/240 of the Cr.P.C. that charges are not liable to be framed under Sec.2(c) and 2(e) read with Secs.3, 4 and 5 of the Act and Sec.420 of the IPC. As stated earlier, I am not referring to the charges under the provisions of the R.B.I. Act. The learned Magistrate proceeded to hold that the charges are liable to be framed for the offences punishable under Sec.2(c) read with Secs.3, 4 and 5 of the Act and Sec.420 of the IPC. The charges are not liable to be framed under Sec.2(e) read with Secs.3, 4 and 5 of the Act, it was

further held.

11. The anxiety of the State to properly defend the charges is evident from the fact that the learned Additional Advocate General has been specially appointed as the Special Public Prosecutor for the conduct of this case. Detailed arguments have been advanced. Following questions do arise for determination:

(i) Is the questions concluded by any earlier decision of this Court?

(ii) Are the charges which are directed to be framed groundless as to warrant discharge under Sec.239 of the Cr.P.C.?

(iii) Did the learned Magistrate err in coming to the conclusion that the charges levelled against the petitioners under Sec.2 (e) read with Sec.3, 4 and 5 of the Act are groundless as to justify discharge?

(iv) Is the Investigating Officer prompted by mala fides?

12. Before proceeding to consider these contentions

specifically it will only be apposite to refer to the quality of consideration of materials by a criminal court at the stage of Sec.239/240 of the Cr.P.C. In a warrant case instituted on a police report, the Magistrate is obliged to consider the police report and the documents sent with it under Sec.173 of the Cr.P.C. and come to a conclusion as to whether the charge against the accused is groundless. In that event, the accused has to be discharged. In all other cases it will have to be held that there is ground to presume that the accused has committed the offence and charges must be framed under Sec.240 of the Cr.P.C. I extract below Secs.239 and 240 of the Cr.P.C:

“239. When accused shall be discharged.-- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. **Framing of charge.-- (1)** If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

(emphasis supplied)

13. It is important that there can be no third category of cases. All cases must either fall under Sec.239 or Sec.240 of the Cr.P.C. Once it is found that the charges are groundless, it will have to be presumed that there is sufficient ground at that stage to show that the accused has committed an offence triable under the law. The quality of consideration under Secs.239 and 240 of the Cr.P.C. has often been referred to loosely as verifying whether there is a prima facie case. The question of framing

charges does arise in three different situations in the Code depending on the nature of the offence alleged and the manner in which the proceedings are initiated. Sections 227/228 (sessions trial), 239/240 (warrant trial – police charge) and 245(1)/246 (warrant trial – private complaint) are the situations. I extract the relevant provisions.

“227. **Discharge.--** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. **Framing of charge.--** (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which

245(1) **When accused shall be**

discharged.-- (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) x x x x x x x x

246. **Procedure where accused is not discharged.--** (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused."

14. It is important to note that the consideration under Secs.227 and 228, 239 and 240 and 245(1) and 246 of the Cr.P.C. are identical; in the sense that it will first have to be decided whether the proceedings are liable to brought to

termination at that stage and if not, the court is to presume guilt and proceed to the next stage of the proceedings. There can be no third category of cases which do not fall within either of the two Sections in these pairs.

15. A careful consideration of Secs.227 and 228, 239 and 240 and 245(1) and 246 of the Cr.P.C. must show that in all these three instances if the cases do not fall under the former of the pairs it has got to fall within the latter of the pairs. Though loosely the requisite satisfaction is referred to as a prima facie case, to me, it appears that it would be idle to assume that the quality of consideration of the materials at these stages are identical in all respects. When it comes to a police charge, discharge under Sec.239 of the Cr.P.C. is possible only if the court entertains the satisfaction that the charge is groundless. This is evidently a shade different from the satisfaction which must be entertained under Sec.245(1) of the Cr.P.C. Both would come under the generic description of a prima facie case. The legislature appears to have realistically taken note of the fact that a police charge comes before the court after it is vetted by the instrumentality of the police which is an indispensable part

of the criminal justice delivery system.

16. To sum up, I do note that a discharge under Sec.239 of the Cr.P.C. is possible only when the court entertains the satisfaction that the allegations/charge against the accused is groundless. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage. The exercise of weighing materials in golden scales is certainly not to be undertaken at this stage and has to be postponed to a later date. Is the allegation/charge groundless? That alone need be considered at the stage of Sec.239/240 of the Cr.P.C.

17. It will be apposite straightaway to deal with the first contention that two earlier decisions of this Court have held that the LIS Deepasthambham Scheme/Project does not fall within the mischief which is sought to be remedied under the Act. Reliance is placed on the decisions of a single Judge in Crl.M.C.No.2912/05 and a Division Bench of this Court in W.P. (c) No.33743/05. To my mind, these decisions cannot at all deliver any advantage to the accused as the relevance of those decisions and the bearing of those decisions on the present

prosecution have been considered by a subsequent Division Bench ruling of this Court in W.P.(c) Nos.12775 & 13152/06 dated 5/7/06. I am bound by the said findings of the Division Bench (see para-18 in particular) which has dealt with both decisions.

18. The observations in the two earlier decisions cannot, in these circumstances, have any bearing on the question raised before me in the light of the subsequent decision of the Division Bench in which both those earlier decisions have been referred to in para-18 and it has been held categorically that those observations/decision can have no bearing on the present prosecution. In these circumstances, it is unnecessary for me to delve deeper into that contention.

19. The contentions are raised as to what exactly is the LIS Deepasthambham Scheme/Project. I have already extracted above what that Scheme means. That is the prosecution case about the Scheme. I am not proceeding to analyse the materials available in detail. Suffice it to say that I have gone through all the relevant documents to ascertain the prosecution case about the Scheme. In particular, I may mention that I have taken note

of the minutes of the partners dated 16/11/02 and the literature about the Scheme and the advertisements made about the Scheme. It will certainly be for the contestants in the course of trial to establish if there be such a contention that the Scheme really is not what it purports to be as revealed from these documents.

20. I shall now consider the second question whether the charge under Sec.420 of the IPC and Sec.2(c) read with Secs.3, 4 and 5 of the Act are groundless.

21. The prosecution has built up its case on the plea that the Scheme is a mathematical impossibility and the promoters of the Scheme know for certain that this Scheme cannot function properly. It is the case of the prosecution that an unworkable Scheme making tall promises which the makers of the promise know fully well cannot work successfully has been offered for the public for their consumption. The very contention is that the Scheme is so grossly untenable that the makers of the promise know fully well that these promises are false. Such

promises are made to induce persons to part with money on the lure of doubling the same. The Scheme would work for some period as Paul can be robbed to pay Peter and ultimately when there is a large mass of Peters they will be left in the lurch without any remedy as they would by then have been deceived and deprived of their money.

22. The question therefore is very important as to whether the Scheme is a possibility or is only a tall false claim made to fraudulently induce persons to part with their money. In this context, it has to be seen that the profitable working of the Scheme is impossible from the very nature of the Scheme offered. Simple arithmetics reveal that utilising the amount of Rs.625/-, only an amount of Rs.180.50 will be available as commission of which Rs.24.25 is claimed by the promoter and Rs.156.25 is offered for payment to the unit holders. The details of the same are given below:

Head	Amount	Commission		
		Total Percentage Amount	For the Promoter Percentage/Amount	For the Subscriber Percentage/Amount
Lottery Tickets	Rs.350/-	28% (Rs.98/-)	3% (Rs. 10.50)	25% Rs.87.50
Magazine	Rs.275/-	30% (Rs.82.50)	5% (Rs.13.95)	25% Rs.68.75
Total	Rs.625/-	Rs.180.50	Rs.24.25	Rs.156.25
Deficit in each				
If Rs.625/- were to be returned = 625 - 156.25 = Rs.468.75				
Deficit in each				
If Rs.1250/- were to be returned = 1250 - 156.25 = Rs.1093.75				

If the amount of Rs.625/- were to be returned, there will be a deficit of Rs.468.75. If double the amount i.e., Rs.1,250/- were to be returned, there will be a deficit of Rs.1,093.75. Therefore for every person for whom double payment is made, the promoter will have to make Rs.1,093.75 and this obviously is paid to him from the money which subsequent subscribers pay as the price of the unit. Of course, I have not taken note of the uncertain commission which would be receivable by the promoter for prizes won by the unit holders through them. I have also not taken specific note of the savings in respect of unpurchased tickets and non-supplied magazines after the subscriber receives the double amount and closes the transaction before elapse of the period of 35 months. It must be

evident for any discerning mind that this Scheme cannot work unless more and more subscribers join and the amount paid by them as unit price is made use of to pay the previous subscribers. The system is an inherently fragile system which is unworkable. Foolish, gullible and stupid persons alone may fall for the Scheme without carefully analysing the stipulations of the Scheme. It would be totally erroneous to assume that the offence of cheating would not lie if the persons deceived are gullible, unintelligent and stupid persons. The system and the law has a duty to protect such victims of crime also. According to me, there is no reason to assume that the promoters had no contumacious intention and they embarked on the venture without any culpable motive on the honest assumption that the tickets sold through them will win prizes and sufficient commission will be available to pay double the amount to all the unit holders.

23. I take note of the fact that inherently there is merit in the allegation of the prosecution that the Scheme is so grossly unworkable that the persons who made representations to that effect and induced persons to part with money did entertain the

contumacious intention. They knew fully well that unworkable false representations were being made. The obvious attempt, it can be presumed at this stage, was to induce persons by such false unworkable representations to part with money. Initially some subscribers can be kept satisfied to induce them and others similarly placed to join the long queue. But inevitably and inescapably later subscribers are bound to suffer unjust loss when they swallow the false promises and make payments.

24. The offence of cheating under Sec.415 of the IPC is defined in the following words:

“415. **Cheating.**-- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionaloly induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to

“cheat”.

Explanation.-- A dishonest concealment of facts is a deception within the meaning of this section”.

The representation must be false. The maker of the representation must know that the representation is false. He deceives the victim to believe that the representation is true. He induces the victim to act on such false representation. The victim does or omits to do an act which he would not have/would have done but for the deception practised on him. This is the ingredient of the offence of cheating and to my mind, at least, at this stage, until better explanations are forthcoming it must be assumed and presumed that the accused have committed the offence of cheating punishable under Sec.420 of the IPC.

25. The next question is as to whether the offence under Sec.2(c) of the Act would be attracted. Sec.2(c) defines a money circulation scheme. It does sound complicated. But there can be no better method of understanding the said statutory provision than to follow the rearrangement of the words of the Section without making any change as done by Justice

Chandrachud in para-7 of the decision in **State of West Bengal v. Swapan Kumar Guha** ((1982) 1 SCC 561). I extract the said rearranged Section in para-7 of the decision in **State of West Bengal v. Swapan Kumar Guha** ((1982) 1 SCC 561) below:

“‘money circulation scheme’ means
any scheme, by whatever name called,

(i) for the making of quick or
easy money, or

(ii) for the receipt of any money
or valuable thing as the
consideration for a promise to
pay money,

on any event or contingency relative or
applicable to the enrolment of members
into the scheme, whether or not such
money or thing is derived from the
entrance money of the members of such
scheme or periodical subscriptions;”

26. The learned counsel for the petitioners first of all contends that there is no Scheme at all. The expression “Scheme” in the definition in Sec.2(c) of the Act has to be

understood fairly and naturally conscious of the mischief which the enactment seeks to curb. In that view of the matter, the expression "Scheme" in Sec.2(c) of the Act can only mean any arrangement venture or project which satisfies the other requirements of the Section. LIS Deepasthambham Scheme/Project, it can safely be assumed at this stage is a Scheme as contemplated by Sec.2(c) of the Act. It, no doubt, offers great potential for making quick and easy money, you deposit Rs.625/- and walk away with Rs.1,250/- within a short period of time. Of course, the time is not specifically stipulated. But the Scheme taken as a whole as revealed from the literature and advertisements offers quick and easy return of double the investment. It is certainly a project under which money is received from the customer with a promise to pay a higher quantum of money in return. Clauses (i) and (ii) of the rearranged definition extracted above are both certainly satisfied by the LIS Deepasthambham Scheme.

27. The only question is whether the promise to pay the double amount is on any event or contingency relevant or

applicable to the enrolment of members into the Scheme. All guns are trained by the learned counsel for the accused on this aspect. He contends that in this case there is no event or contingency relevant or applicable to the enrolment of members to the Scheme on which payment of double the amount depends. He contends that the members are not called upon to enrol other members and there is no specific statement that on enrolment of a stipulated number of members, the first member shall be paid the double amount.

28. The learned counsel for the accused borrows from the dictionary to explain the words "event" and "contingency". I am of opinion that the expression "event" or contingency has to be understood in their plain meaning and not in any technical or legalistic sense. If return of the money would depend upon enrolment of members of the Scheme, certainly the requirement of the section will be satisfied. In the instant case, it is clear as a day light that if more members are not enrolled and unit price is paid by them payment of double the amount cannot be made. It is easy to understand if one is not gullible and naïve, that the scheme offers double the amount on the

fundamental assumption that more members will join and amounts shall be available with the promoter. If there is no further enrolment, obviously payment cannot be made. I do not want to encumber the records with any specific findings. But the conclusion is inevitable that the literature and the advertisements clearly and unmistakably indicate that it is only when 14 more members are enrolled in the scheme that the first member can think or hope of getting double the amount as the return promised to him. There are clinching indications in such publications to show that after the first member, two members must be enrolled and after those two members two each must be enrolled and under those four members two each must be enrolled thus making in all 15 members (1 + 2 + 4 + 8) to make it possible for the first member to get his amount (twice the investment). I do not ignore the fact that it is not specifically stated that the first member will get double the amount after 14 members are enrolled by him or through him. Instead, it is said that the commission available shall be placed separately and when that amount is sufficient to pay double the amount, such amount shall be released to the first member. Such payment

shall be made strictly in accordance with seniority, it is asserted. It is important to note that there is no claim even that the money is invested in any other project which would bring better returns. Commission is the only source by which the scheme makes money admittedly. The same can increase only when the number of unit holders increase.

29. It is contended that no victim has actually come forward to complain about cheating. All the unit holders so far have been paid the amounts due to them. In these circumstances, in the absence of a specified person to complain about cheating the charge of cheating would not lie, it is contended. I find no merit in this contention. The allegation is of cheating by devising a scheme. In the initial days of the scheme all the unit holders may be richly rewarded. Any such devious scheme of deception must initially catch the imagination of the gullible. With this end in view it is possible that money will be pumped in at the initial stages to induce the gullible to purchase the idea. The mere fact that no specific individual unit holder has raised any complaint yet, even if the same were to be accepted as true, cannot in any way affect the allegation of

cheating when the cheating is directed against a large section of humanity though not specifically ascertained and though none of them has come forward yet to make a specific complaint.

30. It is contended that unless there is reciprocity, there cannot be any money circulation scheme. In short, the contention is that any such scheme to be culpable must be a scheme in which the alleged victim does also have a positive and dominant role to play in the implementation of the scheme. The learned senior counsel Sri.M.K. Damodaran contends that in the scheme in question there is even allegedly no specific obligation/burden on the shoulders of any unit holder to enrol any further members/unit holders. The unit holder has no obligation in the scheme to enrol more members/unit holders. Such a scheme will not fall within the mischief of Sec.2(c) of the Act, it is vehemently contended. The following observations in para-8 of **State of West Bengal v. Swapan Kumar Guha** ((1982) 1 SCC 561) is relied on with great vehemence by the learned counsel for the petitioners. I extract the said Para-8 below:

“The systematic programme of action to be a consensual arrangement between two

or more persons under which, the subscriber agrees to advance or lend money on promise of being paid more money on the happening of any event or contingency relative or applicable to the enrolment of members into the programme. Reciprocally, the person who promotes or conducts the programme promises, on receipt of an advance or loan, to pay more money on the happening of such event of contingency. Therefore, a transaction under which, one party deposits with the other or lends to that other a sum of money on promise of being paid interest at a rate higher than the agreed rate of interest cannot, without more, be a money circulation scheme' within the meaning of Section 2(c) of Act, however high the promised rate of interest may be in comparison with the agreed rate. What that section requires is that such reciprocal promises, express or implied, must depend for their performance on the happening of an event or contingency relative or applicable to the enrolment of members into the scheme. In other words, there has to be a

community of interest in the happening of such event or contingency. That explains why Section 3 makes it an offence to “participate” in the scheme or to remit any money “in pursuance of such scheme”. He who conducts or promotes a money-spinning project may have manifold resources from which to pay fanciful interest by luring the unwary customer. But, unless the project envisages a mutual arrangement under which, the happening or non-happening of an event or contingency under which, the happening or non-happening of an event or contingency relative or applicable to the enrolment of members into that arrangement is of the essence, there can be no ‘money circulation scheme’ within the meaning of Section 2(c) of the Act.”

31. Inasmuch as there is no obligation on the part of the unit holder to enlist/enrol more members to the scheme, the scheme in question must be reckoned as one that is not objectionable under Sec.2(c) of the Act, it is contended.

32. I am unable to accept this contention at all. The

passage referred above cannot lead me to the conclusion that the subscriber/unit holder must have a positive and dominant part to play in the implementation/popularisation of the scheme. I have already extracted the Section above. The crucial requirement is that the payment of money - double the amount in this case, must be "on an event or contingency relative or applicable to the enrolment of members into the scheme". The plain language of the section does not mean or insist that such enrolment of members must be by the member already enrolled. It is impossible to read into the section such a requirement which would oblige the court to insist on subsequent enrolment of members into the scheme by such members already enrolled. The event or contingency on the happening of which the amount would become payable must be relative or applicable to enrolment of members into the scheme. Such enrolment of further members may be by the promoter himself or the agents of the promoter or members already enrolled or voluntarily by the gullible sections of society. The crucial question is that the payment of money must be dependent on an event or contingency relative or applicable to the enrolment of more

members into the scheme. Who enrolls them, according to me, is irrelevant. In the instant case the payment of double the amount to the unit holder is notified by the literature to be depended on and is actually found to be dependent on enrolment of further members into the scheme. Reciprocity or mutuality referred to in para-8 of **Swapan Kumar Guha** is certainly not the obligation of the already enrolled member to enroll more members. Such a stipulation cannot be spelt out from the plain language of Sec.2(c) of the Act.

33. Crocodile tears are shed for the unfortunate gullible subscriber who may innocently have got himself enrolled under the lure for handsome returns. Such person will also be liable to culpable consequences in view of Secs. 3 and 4 of the Act, it is lamented. Reliance was placed on para-9 of **Swapan Kumar Guha** in support of the contention that unless the one who is already enrolled is also guilty of contumacious behaviour, the scheme cannot be a scheme. I extract para-9 below:

“9. Numerous persons lend their hard-earned monies in the hope of earning high returns. It is notorious that, eventually, quite a few of them lose both

the principal and the interest, for no project can succeed against the basic laws of economics. Sharp and wily promoters pay A's money to B and B's to C in order to finance interest at incredible rates; and eventually when a high-risk investment made by them as the cost of the credulous lenders fails, the entire arrangement founders on the rock of foolish optimism. The promoters, of course, have easy recourse to gadgets of the law of insolvency. It is difficult to hold that the tender, himself a victim of the machinations of the crafty promoter, is intended by the Act to be arraigned as an accused. I do not think that any civilised law can intend to add insult to injury."

34. I am not concerned in this case with the prosecution of a member already enrolled. It is not necessary for me to consider the defences which would be available to him. The scheme of the Act is very clear. It declares what a money circulation scheme is. The law prohibits such a scheme. It further says that the promoter as well as a participant in such a scheme shall be guilty under the Act and shall be exposed to

penal consequences. The culpability of a promoter is different from the culpability of a mere member. The culpability of a member who enrolls others and in the bargain acts as an agent of the promoter is certainly different from a member pure and simple. All those different shades of culpability can be considered when the question of sentence of such persons has to be decided under Sec.4 of the Act. The courts must realise the real distinction between the one who runs the scheme and the one who was a mere member to the scheme. Law makes it punishable for a promoter as well as a participant under Secs.3 and 4 of the Act. The mere fact that a participant is also made liable does not in any way throw light on the nature of the scheme. The law does not obviously want any one to promote and run a scheme. In its anxiety to prevent such schemes the law makes even mere participation an offence. Under Secs.3 and 4 of the Act even mere remitting of money in such a scheme is punishable. That is no reason to assume that the scheme in order to be objectionable must be one in which the gullible subscribers must also have an equally contumacious mind as the wily promoter.

35. It is contended that there is nothing available so far to indicate that enrolment of 14 members is sine qua non for payment of the amount. The learned C.J.M. has adverted to this aspect. The literature shows that the scheme works when 14 persons are enrolled in the scheme. It is, of course, true that it is not specified that the date of payment shall be the date on which the 14th member is enrolled. But such a candid admission of culpability is not necessary. The very scheme is that when commission received is sufficient to pay double the amount for the first unit holder, the same shall be paid. It shall never be sufficient unless more and more persons are enrolled. Sufficient amount being available is a contingency or event which can normally happen only when 14 or more members are enrolled. That the obvious is stated in different language is no reason for a court to come to the conclusion that payment of double the amount is not dependent or relative to the contingency of enrolment of new members.

36. Even the penal law must receive a purposive interpretation. It would be idle to attempt to interpret the law without being conscious of the mischief which it seeks to

prevent. The fight against injustice must be inherent in the interpreter also. Injustice/mischief which law seeks to prevent must be correctly ascertained. Any interpretation without understanding such mischief/injustice would be an exercise in emptiness. The collection of money from many Pauls to pay one Peter, fraudulently taking away substantial portion of the amount so collected is the crux or gravamen of the money circulation scheme prohibited under the Act. The interpreter must have the yearning to prevent the mischief. If he does not have that, he will miss the bus and will not be able to perform what is expected of him in the task of interpretation.

37. In these circumstances, I find no merit in the contention that the allegations under Sec.420 of the IPC and Sec.2(c) read with Secs.3, 4 and 5 of the Act are not made out and the charges on those aspects are groundless.

38. In the revision filed by the State the third question is raised that the scheme answers the description of 'prize chit' defined under Sec.2(e) of the Act. I extract Sec.2(e) of the Act below:

“(e) “prize chit” includes any transaction or arrangement by whatever

name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies in one lumpsum or in instalments by way of contributions or subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefit, thrift or any other scheme or arrangement by whatever name called, and utilises the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes, namely:-

(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or gifts in cash or in kind, whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement;

(ii) refunding to the subscribers or such of them as have not won any prize or

gift, the whole or part of the subscriptions, contributions or other monies collected, with or without any bonus, premium, interest or other advantage by whatever name called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein, but does not include a conventional chit.”

39. The learned Additional Advocate General/Special Prosecutor fairly submits that both limbs [i.e., (i) and (ii)] have to be satisfied in order to bring an activity within the sweep of the definition of “prize chit” under Sec.2(e) of the Act. The learned Additional Advocate General was requested to explain how the element of “determination by lot, draw or in any other manner” insisted by limb (i) of the definition can be satisfied. There is no argument that there is any element involved in this case of draw of lots to determine the person to whom payment is to be made. Though no concession is specifically made, I find there is no serious contention with conviction urged that the LIS Deepasthambham Scheme would answer the definition of “prize

chit” under Sec.2(e) of the Act. The challenge raised by the State against the refusal to frame charges under Sec.2(e) read with Secs.3, 4 and 5 of the Act must, in these circumstances, fail.

40. It is finally contended that the police officer who registered the crime had acted mala fide. These petitions are not under Sec.482 of the Cr.P.C. and are filed with a prayer to invoke the revisional jurisdiction. That technicality notwithstanding, no reason is shown as to why and how it is alleged and assumed that the police officer is actuated by mala fides. The Inspector General of Police had got the crime registered. It is contended that this shows his mala fides. The crime has has been registered after the declaration of elections to the State Legislature. Why did he not register the crime earlier? Why did he not wait for the popular Government come into power before he registered the crime? Probably the police officer felt that when the political executive takes over he may not have the freedom and liberty to register such a crime and initiate action. Whatever be the reason, I am certainly of opinion that the Inspector General of Police who registered the crime has not acted beyond his jurisdiction in registering the

crime. He has the obligation under Sec.149 of the Cr.P.C. to interpose the commission of cognizable offences. The aggressive advertisement campaign resorted to by the accused must have aroused doubts and dissatisfaction in the mind of right thinking members of the polity as to why the State and its functionaries were sleeping and inactive. That the Inspector General of Police registered the crime during the transition of power from one Government to the other - after the elections were declared, does not, in any way, affect the validity of the charges raised. That at least one police officer opened his eyes and swung into action belatedly while all the other powers that he feigned slumber is no evidence of his mala fides. That he thought that he could not do the same when one popular Government was in power and may not be able to do so after the next assumes office may be a sad commentary on such Governments but does not certainly point to his mala fides. That he may be acting at the behest of other financial institutions envious of the petitioners is not an argument which has been rendered probable by materials to even reckon the same as a contention.

41. Lastly, there is a contention raised that other similar schemes are in vogue and no action has been taken against such schemes. If such other similar schemes are in vogue, it is certainly for the State and its officials to immediately plunge into action to prevent the gullible being defrauded. The reasons for failure to initiate action against such other schemes will have to be probed into; but, at any rate, that other such schemes are being permitted to operate now is no reason to interfere with the charges framed. A Government or police force cannot, if they act bona fide, naively be witnesses to the fraud played by the wily promoters on the gullible humanity on the mere ground that no specific complaint is received. Elected Governments and servants of the people cannot take shelter behind the plea that the helpless righteous or the defeated avaricious have not taken upon themselves the burden to complain.

42. In the result, these revision petitions are dismissed. I may, however, hasten to observe that the dismissal of these revision petitions will not, in any way, fetter the rights of the petitioners/accused to raise all relevant and appropriate contentions before the learned Magistrate in the course of the

CRL.R.P.NOs.4126, 4132 4133/2006
& 1290, 1291 & 1292/07 -: 41 :-

trial. I have only chosen to take the view that the charges do not deserve to be set aside on the ground that they are groundless. The exercise of weighing materials in golden scales must certainly be performed by the courts at the end of the trial.

Sd/-

(R. BASANT, JUDGE)

Nan/

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P.S. to Judge